

OCT 18 2005**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PAULINO FLORES-DELGADO,

Defendant - Appellant.

No. 04-30343

D.C. No. CR-04-02035-LRS

MEMORANDUM^{*}

Appeal from the United States District Court
for the Eastern District of Washington
Lonny R. Suko, District Judge, Presiding

Submitted October 11, 2005^{**}

Before: T.G. NELSON, WARDLAW and TALLMAN, Circuit Judges.

Paulino Flores-Delgado appeals the 41-month sentence imposed following his guilty plea conviction for being an alien found in the United States after deportation, in violation of 8 U.S.C. § 1326. We have jurisdiction pursuant to 28 U.S.C. § 1291.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We conclude from the district court's comments at Flores-Delgado's sentencing hearing that there is "a reasonable probability that he would have received a different sentence had the district judge known that the sentencing guidelines were advisory." *See United States v. Ameline*, 409 F.3d 1073, 1078 (9th Cir. 2005) (en banc). Accordingly, we vacate Flores-Delgado's sentence and remand for resentencing. *See United States v. Beaudion*, 416 F.3d 965, 970 (9th Cir. 2005).

VACATED and REMANDED.